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10 **BEFORE THE**
11 **DENTAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Second Amended
14 Accusation Against:

Case Number 4402018002387

SECOND AMENDED ACCUSATION

15 **JEFFREY ALAN SULITZER, DMD**
16 271 EASTRIDGE DR.
WOODLAND, WA 98674-934

17 **Dental License Number 51841,**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Karen M. Fischer (Complainant) brings this Second Amended Accusation solely in
23 her official capacity as the Executive Officer of the Dental Board of California (Board),
24 Department of Consumer Affairs.

25 2. On or about October 7, 2003, the Board issued Dental License number 51841 to
26 Jeffrey Alan Sulitzer, DMD (Respondent). The Dental License was in full force and effect at all
27 times relevant to the charges brought herein and will expire on June 30, 2023, unless renewed.

28 //

JURISDICTION

3. This Second Amended Accusation is brought before the Dental Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Code section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Code section 1670 states:

Any licentiate may have his license revoked or suspended or be reprimanded or be placed on probation by the board for unprofessional conduct, or incompetence, or gross negligence, or repeated acts of negligence in his or her profession, or for the issuance of a license by mistake, or for any other cause applicable to the licentiate provided in this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

6. Code section 1807 states:

A dental corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a license under Section 1634 of this code. The board shall have the same powers of suspension, revocation and discipline against a dental corporation as are now or hereafter authorized by Section 1670 of this code, or by any other similar statute against individual licensees, provided, however, that proceedings against a dental corporation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

STATUTORY PROVISIONS

7. Code section 143.5, subdivision (a) states:

No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a

1 provision in an agreement to settle a civil dispute, whether the agreement is
2 made before or after the commencement of a civil action, that prohibits the
3 other party in that dispute from contacting, filing a complaint with, or
4 cooperating with the department, board, bureau, or program within the
5 Department of Consumer Affairs that regulates the licensee or that requires
6 the other party to withdraw a complaint from the department, board,
7 bureau, or program within the Department of Consumer Affairs that
8 regulates the licensee. A provision of that nature is void as against public
9 policy, and any licensee who includes or permits to be included a provision
10 of that nature in a settlement agreement is subject to disciplinary action by
11 the board, bureau, or program.

8. Code section 1625 states:

9 Dentistry is the diagnosis or treatment, by surgery or other method, of
10 diseases and lesions and the correction of malpositions of the human teeth,
11 alveolar process, gums, jaws, or associated structures; and such diagnosis
12 or treatment may include all necessary related procedures as well as the use
13 of drugs, anesthetic agents, and physical evaluation. Without limiting the
14 foregoing, a person practices dentistry within the meaning of this chapter
15 who does any one or more of the following:

16 (a) By card, circular, pamphlet, newspaper or in any other way advertises
17 himself or represents himself to be a dentist.

18 (b) Performs, or offers to perform, an operation or diagnosis of any kind, or
19 treats diseases or lesions of the human teeth, alveolar process, gums, jaws,
20 or associated structures, or corrects malposed positions thereof.

21 (c) In any way indicates that he will perform by himself or his agents or
22 servants any operation upon the human teeth, alveolar process, gums, jaws,
23 or associated structures, or in any way indicates that he will construct, alter,
24 repair, or sell any bridge, crown, denture or other prosthetic appliance or
25 orthodontic appliance.

26 (d) Makes, or offers to make, an examination of, with the intent to perform
27 or cause to be performed any operation on the human teeth, alveolar
28 process, gums, jaws, or associated structures.

(e) Manages or conducts as manager, proprietor, conductor, lessor, or
otherwise, a place where dental operations are performed.

9. Code section 1626 states, in pertinent part:

It is unlawful for any person to engage in the practice of dentistry in the
state, either privately or as an employee of a governmental agency or
political subdivision, unless the person has a valid, unexpired license or
special permit from the board.

1 The following practices, acts and operations, however, are exempt from the
2 operation of this chapter: ...

3 (e) The construction, making, verification of shade taking, alteration or
4 repairing of bridges, crowns, dentures, or other prosthetic appliances, or
5 orthodontic appliances, when the casts or impressions for this work have
6 been made or taken by a licensed dentist, but a written authorization signed
7 by a licensed dentist shall accompany the order for the work or it shall be
8 performed in the office of a licensed dentist under his or her supervision.
9 The burden of proving written authorization or direct supervision is upon
10 the person charged with the violation of this chapter.

11 It is unlawful for any person acting under the exemption of this subdivision
12 to represent or hold out to the public in any manner that he or she will
13 perform or render any of the services exempted by this subdivision that are
14 rendered or performed under the provisions of this chapter by a licensed
15 dentist, including the construction, making, alteration or repairing of dental
16 prosthetic or orthodontic appliances.

17 10. Code section 1657 states, in pertinent part:

18 (a) For the purposes of this section, the following definitions shall apply:

19 (1) "Mobile dental unit" means a self-contained facility, which may include
20 a trailer or van, in which dentistry is practiced that may be moved, towed,
21 or transported from one location to another...

22 (b) A mobile dental unit, or a dental practice that routinely uses portable
23 dental units to provide treatment in nondental office locations, shall be
24 registered and operated in accordance with regulations established by the
25 board. These regulations shall not be designed to prevent or lessen
26 competition in service areas. The regulations shall require the registrant to
27 identify a licensed dentist responsible for the mobile dental unit or portable
28 practice, and shall include, but shall not be limited to, requirements for
availability of followup and emergency care, maintenance and availability
of provider and patient records, and treatment information to be provided
to patients and other appropriate parties. A mobile dental unit, or a dental
practice using portable dental units, registered and operated in accordance
with the board's regulations and that has paid the fees established by the
board, including a mobile dental unit registered for the purpose specified in
subdivision (e), shall otherwise be exempt from this article and Article 3.5
(commencing with Section 1658).

11. Code section 1658 states, in pertinent part:

(a) When a licensee desires to have more than one place of practice, he or
she shall, prior to the opening of the additional office, apply to the board,
pay the fee required by this chapter, and receive permission in writing from

the board to have the additional place of practice.

“Place of practice” means any dental office where any act of dentistry is practiced as defined by Section 1625, and includes a place of practice in which the applicant holds any proprietary interest of any nature whatsoever, or in which he or she holds any right to participate in the management or control thereof. A dentist who is the lessor of a dental office shall not be deemed to hold a proprietary interest in that place of practice, unless he or she is entitled to participate in the management or control of the dentistry practiced there.

12. Code section 1658.1 states:

Nothing in this chapter shall be construed to prohibit a licensed dentist from maintaining more than one dental office in this state if all of the following conditions are met:

(a) In addition to any existing legal responsibility or liability, a dentist maintaining more than one office shall assume legal responsibility and liability for the dental services rendered in each of the offices maintained by the dentist.

(b) A dentist maintaining more than one office shall ensure that each office is in compliance with the supervision requirements of this chapter.

(c) A dentist maintaining more than one office shall post, in an area which is likely to be seen by all patients who use the facility, a sign with the dentist's name, mailing address, telephone number, and dental license number.

13. Code section 1680 states, in pertinent part:

Unprofessional conduct by a person licensed under this chapter is defined as, but is not limited to, any one of the following: ...

(c) The aiding or abetting of any unlicensed person to practice dentistry unlawfully...

(f) The use of any false, assumed, or fictitious name, either as an individual, firm, corporation, or otherwise, or any name other than the name under which he or she is licensed to practice, in advertising or in any other manner indicating that he or she is practicing or will practice dentistry, except that name as is specified in a valid permit issued pursuant to Section 1701.5...

(h) The making use by the licensee or any agent of the licensee of any advertising statements of a character tending to deceive or mislead the public...

(n) The violation of any of the provisions of this division.

1 (w) Use of fraud in the procurement of any license issued pursuant to this
2 chapter...

3 (y) The aiding or abetting of a licensed dentist, dental assistant, registered
4 dental assistant, registered dental assistant in extended functions, dental
5 sedation assistant permitholder, orthodontic assistant permitholder,
6 registered dental hygienist, registered dental hygienist in alternative
practice, or registered dental hygienist in extended functions to practice
dentistry in a negligent or incompetent manner...

7 (ae) The utilization by a licensed dentist of any person to perform the
8 functions of any registered dental assistant, registered dental assistant in
extended functions, dental sedation assistant permitholder, orthodontic
9 assistant permitholder, registered dental hygienist, registered dental
10 hygienist in alternative practice, or registered dental hygienist in extended
functions who, at the time of initial employment, does not possess a
11 current, valid license or permit to perform those functions. ...

12 14. Code section 1684.5 states, in pertinent part:

13 (a) In addition to other acts constituting unprofessional conduct under this
14 chapter, it is unprofessional conduct for any dentist to perform or allow to
15 be performed any treatment on a patient who is not a patient of record of
16 that dentist. A dentist may, however, after conducting a preliminary oral
examination, require or permit any dental auxiliary to perform procedures
necessary for diagnostic purposes, provided that the procedures are
permitted under the auxiliary's authorized scope of practice...

17 (b) For purposes of this section, "patient of record" refers to a patient who
18 has been examined, has had a medical and dental history completed and
19 evaluated, and has had oral conditions diagnosed and a written plan
developed by the licensed dentist.

20 (c) For purposes of this section, if dental treatment is provided to a patient
21 by a registered dental assistant in extended functions, a registered dental
22 hygienist, or a registered dental hygienist in alternative practice pursuant to
the diagnosis and treatment plan authorized by a supervising dentist, at a
23 location other than the dentist's practice location, it is the responsibility of
the authorizing dentist that the patient or the patient's representative receive
24 written notification that the care was provided at the direction of the
authorizing dentist and that the notification include the authorizing dentist's
25 name, practice location address, and telephone number. This provision
26 shall not require patient notification for dental hygiene preventive services
provided in public health programs as specified and authorized in Section
27 1911, or for dental hygiene care when provided as specified and authorized
in Section 1926.

28 //

15. Code section 1685 states:

In addition to other acts constituting unprofessional conduct under this chapter, it is unprofessional conduct for a person licensed under this chapter to require, either directly or through an office policy, or knowingly permit the delivery of dental care that discourages necessary treatment or permits clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment, as determined by the standard of practice in the community.

16. Code section 1741 states, in pertinent part:

(b) "Direct supervision" means supervision of dental procedures based on instructions given by a licensed dentist, who must be physically present in the treatment facility during the performance of those procedures.

(c) "General supervision" means supervision of dental procedures based on instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist during the performance of those procedures.

17. Code section 1701.5 states:

Any association or partnership or corporation or group of three or more dentists, engaging in practice under any name that would otherwise be in violation of Section 1701 may practice under this name if, and only if, the association, partnership, corporation or group holds an outstanding, unexpired, unsuspended, and unrevoked permit issued by the board under this section. On and after July 1, 1995, any individual dentist or pair of dentists engaging in the practice of dentistry under any name that would otherwise be in violation of Section 1701 may practice under that name if and only if the dentist or pair of dentists hold an outstanding, unexpired, unsuspended, and unrevoked permit issued by the board under this section. The board shall issue written permits authorizing the holder to use a name specified in the permit in connection with the holder's practice if, and only if, the board finds to its satisfaction that:

(a) The applicant or applicants are duly licensed dentists.

(b) The place or establishment, or the portion thereof, where the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at the place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants.

(c) The name that the applicant or applicants propose to operate contains at least one of the following designations: "dental group," "dental practice," or "dental office" and contains the family name of one or more of the past, present, or prospective associates, partners, shareholders, or members of

1 the group, and is in conformity with Section 651 and subdivisions (i) and
2 (l) of Section 1680.

3 (d) All licensed persons practicing at the location designated in the
4 application hold valid and outstanding licenses and that no charges of
unprofessional conduct are pending against any persons practicing at that
location.

5 Permits issued under this section by the board shall expire and become
6 invalid unless renewed at the times and in the manner provided for the
renewal of certificates issued under this chapter.

7 Any permits issued under this section may be revoked or suspended at any
8 time that the board finds that any one of the requirements for original
9 issuance of a permit is no longer being fulfilled by the holder to whom the
10 permit was issued. Proceedings for revocation or suspension shall be
governed by the Administrative Procedure Act.

11 In the event charges of unprofessional conduct are filed against the holder
12 of a permit issued under this section, or a member of an association or
partnership or a member of a group or corporation to whom a permit has
13 been issued under this section, proceedings shall not be commenced for
14 revocation or suspension of the permit until final determination of the
charges of unprofessional conduct and unless the charges have resulted in
15 revocation or suspension of license.

16 18. Code section 1750 states:

17 (a) A dental assistant is an individual who, without a license, may perform
18 basic supportive dental procedures, as authorized by Section 1750.1 and by
19 regulations adopted by the board, under the supervision of a licensed
dentist. "Basic supportive dental procedures" are those procedures that
20 have technically elementary characteristics, are completely reversible, and
are unlikely to precipitate potentially hazardous conditions for the patient
being treated.

21 (b) The supervising licensed dentist shall be responsible for determining
22 the competency of the dental assistant to perform the basic supportive
23 dental procedures, as authorized by Section 1750.1.

24 (c) The employer of a dental assistant shall be responsible for ensuring that
25 the dental assistant who has been in continuous employment for 120 days
26 or more, has already successfully completed, or successfully completes, all
of the following within a year of the date of employment:

27 (1) A board-approved two-hour course in the Dental Practice Act.

28 (2) A board-approved eight-hour course in infection control.

1 (3) A course in basic life support offered by an instructor approved by the
2 American Red Cross or the American Heart Association, or any other
3 course approved by the board as equivalent and that provides the student
the opportunity to engage in hands-on simulated clinical scenarios.

4 (d) The employer of a dental assistant shall be responsible for ensuring that
5 the dental assistant maintains certification in basic life support.

6 (e) This section shall become operative on January 1, 2010.

7 19. Code section 1750.1 states, in pertinent part:

8 (b) A dental assistant may perform the following duties under the direct
9 supervision of a supervising licensed dentist: ...

10 (3) Take intraoral impressions for all nonprosthodontic appliances...

11 (8) Perform measurements for the purposes of orthodontic treatment.

12 20. Code section 1753.5 states, in pertinent part:

13 (b) A registered dental assistant in extended functions licensed on or after
14 January 1, 2010, is authorized to perform the following additional
15 procedures under direct supervision and pursuant to the order, control, and
full professional responsibility of a licensed dentist:

16 (1) Conduct preliminary evaluation of the patient's oral health, including,
17 but not limited to, charting, intraoral and extra-oral evaluation of soft
tissue, classifying occlusion, and myofunctional evaluation...

18 (c) All procedures required to be performed under direct supervision shall
19 be checked and approved by the supervising licensed dentist prior to the
20 patient's dismissal from the office.

21 21. Code section 2290.5 states, in pertinent part:

22 (a) For purposes of this division, the following definitions shall apply: ...

23 (3) "Health care provider" means either of the following:

24 (A) A person who is licensed under this division...

25 (6) "Telehealth" means the mode of delivering health care services and
26 public health via information and communication technologies to facilitate
27 the diagnosis, consultation, treatment, education, care management, and
28 self-management of a patient's health care while the patient is at the
originating site and the health care provider is at a distant site. Telehealth

1 facilitates patient self-management and caregiver support for patients and
2 includes synchronous interactions and asynchronous store and forward
transfers.

3 (b) Prior to the delivery of health care via telehealth, the health care
4 provider initiating the use of telehealth shall inform the patient about the
5 use of telehealth and obtain verbal or written consent from the patient for
the use of telehealth as an acceptable mode of delivering health care
services and public health. The consent shall be documented.

6 (c) Nothing in this section shall preclude a patient from receiving in-person
7 health care delivery services during a specified course of health care and
treatment after agreeing to receive services via telehealth.

8 (d) The failure of a health care provider to comply with this section shall
9 constitute unprofessional conduct. Section 2314 shall not apply to this
10 section.

11 (e) This section shall not be construed to alter the scope of practice of any
12 health care provider or authorize the delivery of health care services in a
setting, or in a manner, not otherwise authorized by law.

13 **REGULATORY PROVISIONS**

14 22. Title 16, California Code of Regulations (“CCR”) section 1005, subsection (b)(3)
15 states, “[a] copy of this regulation (i.e., pertaining to minimum standards for infection control)
16 shall be posted in each dental office.”

17 23. Title 16, CCR section 1049 states:

18 (a) Definition. For purposes of Section 1657 of the code, a “mobile dental
19 clinic” or “mobile dental unit” means any self-contained facility in which
dentistry will be practiced which may be moved, towed, or transported
20 from one location to another.

21 (b) Application for Permit. A licensed dentist who wishes to operate a
22 mobile dental clinic shall apply to the board for a permit by providing
evidence of compliance with the requirements of this section and paying
23 the fee prescribed in Section 1021 for application for an additional office
permit.

24 The board shall inform an applicant for a permit in writing within 7 days
25 whether the application is complete and accepted for filing or is deficient
and what specific information is required.

26 The board shall decide within 60 days after the filing of a completed
27 application whether the applicant meets the requirements of a permit.
28

(c) Requirements.

(1) The applicant shall certify that:

(A) There is a written procedure for emergency follow-up care for patients treated in the mobile dental clinic and that such procedure includes arrangements for treatment in a dental facility which is permanently established in the area.

(B) The mobile dental clinic has communication facilities which will enable the operator thereof to contact necessary parties in the event of a medical or dental emergency.

(C) The mobile dental clinic conforms to all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, construction, sanitation and zoning and the applicant possesses all applicable county and city licenses or permits to operate the unit.

(D) The driver of the unit possesses a valid California driver's license.

(2) The applicant shall maintain an official business or mailing address of record which shall be filed with the board. The board shall be notified within 30 days of any change in the address of record. All written or printed documents available from or issued by the mobile dental clinic shall contain the official address of record for the mobile dental clinic.

(3) Each mobile dental clinic shall:

(A) Have ready access to a ramp or lift if services are provided to disabled persons.

(B) Have a properly functioning sterilization system.

(C) Have ready access to an adequate supply of potable water, including hot water.

(D) Have ready access to toilet facilities.

(E) Have a covered galvanized, stainless steel, or other noncorrosive metal container for deposit of refuse and waste materials.

(d) Transferability. A permit to operate a mobile dental clinic is not transferable.

(e) Renewal. A permit to operate a mobile dental clinic expires at the same time as the permit holder's dental license. The permit holder may apply for renewal and shall pay the fee set for renewal of an additional office permit.

1 24. Title 16, CCR section 1055 states:

2 Nothing in the laws or rules relating to dental corporations alters the
3 dentist's duties and responsibilities to and professional relationships with
4 his patients. Nor do such laws or rules in any way impair the disciplinary
5 powers of the board over its licentiates or impair any other law or rule
6 pertaining to the standards of professional conduct of dentists.

7 25. Title 16, CCR section 1057 states:

8 A dental corporation is subject to the additional office requirements of
9 Article 3.5, Chapter 4 of Division 2 of the Code. A dental corporation
10 which desires to have more than one place of practice shall, prior to
11 opening any additional office, apply for and receive permission in writing
12 from the board.

13 26. Title 16, CCR section 1065 states:

14 (a) A licensed dentist engaged in the practice of dentistry shall provide
15 notice to each patient of the fact that the dentist is licensed and regulated
16 by the Board. The notice shall include the following statement and
17 information:

18 NOTICE

19 Dentists are licensed and regulated
20 by the Dental Board of California
21 (877) 729-7789
22 www.dbc.ca.gov

23 (b) The notice required by this section shall be provided by prominently
24 posting the notice in a conspicuous location accessible to public view on
25 the premises where the dentist provides the licensed services, in which case
26 the notice shall be in at least 48-point type font.

27 27. Title 16, CCR section 1068 states:

28 All dentists utilizing the services of dental auxiliaries shall post a notice in
29 a common area of the office which delineates duties and functions deemed
30 by the board as delegable within stipulated settings and/or circumstances.
31 Such notice shall be readily accessible to all individuals under supervision
32 of the dentist.

33 **COST RECOVERY**

34 28. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
35 administrative law judge to direct a licentiate found to have committed a violation or violations of
36 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **FACTUAL BACKGROUND**

5 29. The timeframe relevant to the charges and allegations set forth herein includes the
6 period of April 13, 2017 until the date of the filing of this Second Amended Accusation.

7 30. As alleged hereinabove, Jeffrey Sulitzer, DMD (Respondent) is a California licensed
8 dentist. Respondent has formed a professional corporation and is registered with the California
9 Secretary of State as “Jeffrey Sulitzer, DMD, Professional Corporation” (hereinafter, “Sulitzer,
10 PC”). The Articles of Incorporation for Sulitzer, PC state that the purpose of the corporation is to
11 engage in the profession of dentistry.

12 31. A Statement of Information that Respondent filed for Sulitzer, PC (dated August 2,
13 2018) states that the address for the professional corporation is 414 Union Street, 8th Floor,
14 Nashville, TN 37219 – the same address as the “Company” that is described below.

15 32. Respondent held himself out as being the Chief Clinical Officer for an out-of-state
16 business consisting of a parent company and wholly owned subsidiaries that advertises, treatment
17 plans, fabricates, manufactures and sells custom-made clear orthodontic aligners directly to
18 patients (hereinafter, the “Company”).

19 33. The Company is owned and controlled by non-dentist persons and entities and is not
20 registered with the California Department of Managed Health Care as a health care service plan.
21 Nor does the Company possess a Knox-Keene Act license that would exempt it from the
22 Moscone-Knox Act requirements of ownership.

23 34. To further its sale of orthodontic aligners, the Company, utilizing its trademarks and
24 trade dress, owns and/or operates scores of dental offices throughout the United States, including
25 over 20 offices in California. The Company also furthers its sale of orthodontic aligners through
26 the internet and mobile dental units.

27 35. The Company provides (and during the timeframe relevant to this Second Amended
28 Accusation provided) its aligners directly to patients utilizing one of two models, ostensibly using

1 a teledentistry platform. In the first model, after a patient completes an online dental self-
2 assessment, the patient is directed to order an at-home dental impression kit that the Company
3 sends to the patient. The Company then requests the patient to make their own dental impression
4 using the at-home dental impression kit and to return the resulting cast to the Company. The
5 Company then uses the cast to create a 3D computer image of the patient's dentition intended for
6 the purpose of orthodontic treatment planning and for the fabrication and manufacture of custom-
7 made orthodontic aligners for the patient.

8 36. In the second model, the patient visits either a dental office or mobile dental unit
9 owned and/or operated by the Company. At these locations, a dental assistant obtains the patient's
10 medical history and signature on an informed consent form that describes the benefits and risks
11 pertaining to orthodontic treatment in general. This informed consent form also includes
12 provisions whereby the patient consents to the use of telehealth and purports to "release [the
13 Company] from liability for any claims by me or any third party in connection with my
14 participation or use of the invisible aligner treatment." Dental assistants also request the patient
15 to self-verify their own dental health by stating, in writing, that they have had a prior exam with a
16 licensed dentist who purportedly cleared the patient for the Company's orthodontic aligner
17 treatment. Once the patient completes the necessary forms, a dental assistant, using an iTero 3D
18 (or like) scanner, performs an intraoral dental scan that creates a 3D dental image for purposes of
19 orthodontic treatment planning and the fabrication and manufacture of custom-made orthodontic
20 aligners.

21 37. In both models described above, the Company sends the 3D dental image to its own
22 facilities located in Costa Rica for orthodontic aligner treatment planning. Once the treatment
23 plan is completed, it is supposedly reviewed by a state-licensed dentist. Without first examining
24 the patient, the dentist either approves or denies the orthodontic aligner treatment plan. If
25 approved, the Company uses the 3D dental image of the patient's dentition to create a set of clear
26 dental aligners to treat the patient. The Company sends those aligners directly to the patient.

27 38. In both models, patients do not interact with the dentists who reviewed their 3D
28 dental image. Nor do patients receive the name, address, or contact information of the dentists

1 who approve their treatment plan.

2 39. In both models, dental or orthodontic follow-up appointments are not scheduled for
3 patients during their orthodontic treatment. Instead, the patient is requested to photograph their
4 own dentition approximately every 90 days and to transmit those photographs to the Company so
5 that a dentist can review them. If problems occur during treatment, the patient is referred to the
6 Company's customer service department and not to any particular licensed dentist.

7 40. The Company claims that it does not itself practice dentistry. Instead, the Company
8 purports to operate as an "oral care company" that provides only non-clinical dental support
9 organization (DSO) services to independent dental practices that desire to treat patients with mild
10 to moderate malocclusion remotely using the Company's clear aligner therapy. These "Affiliated
11 Dental Practices" supposedly enter into a series of contracts with the Company for use of the
12 Company's DSO services which include, among other things, access to the Company's
13 teledentistry platform. The Affiliated Dental Practices, in turn, contract with state-licensed
14 dentists and orthodontists, who are to actually treat patients.

15 41. In practice, Sulitzer, PC is the Affiliated Dental Practice operating in and around
16 California. Sulitzer, PC, in turn, contracts with other California-licensed dentists, who are to treat
17 patients using the Company's teledentistry platform and orthodontic aligners. The dentists whom
18 Sulitzer, PC has engaged in this regard include, among others, Dr. GM, who resides in Colorado.

19 42. In and around 2017 and 2018, Respondent, through Sulitzer, PC, began applying to
20 the Board for several Fictitious Name Permits (FNPs) utilizing the Company's name and
21 characterizing it as his own dental group. With respect to each of these FNP applications,
22 Respondent stated, under penalty of perjury, that "[t]he dental practice at the location specified on
23 this application is wholly owned and entirely controlled by this corporation." Respondent's
24 representations, however, were false; the FNPs were instead for dental offices that the Company
25 in fact owned and controlled, either entirely or in part. Based on Respondent's representations,
26
27
28

the Board issued the following FNPs to Sulitzer, PC: FNP numbers 13995,¹ 13996,² 13997,³ 13998,⁴ 13999,⁵ 14180,⁶ 14181,⁷ 14182⁸ and 14209.⁹ Three of these FNPs were issued for the following dental offices:

(i) FNP number 13995 for a dental office located at 1111 Broadway, Oakland, CA (“Oakland Office”);

(ii) FNP number 13996 for a dental office located at 655 Montgomery Street, San Francisco, CA (“San Francisco Office”); and,

(iii) FNP number 13999 for a dental office located at 1601 Vine Street, 6th Fl., Los Angeles, CA (“L.A. Office”).

During the timeframe relevant to this Second Amended Accusation, these dental offices that Respondent claimed to wholly own and entirely control were in operation and utilized the orthodontic treatment models in the orthodontic treatment of patients described in the Factual Background section of this Second Amended Accusation.

43. Further, in and around 2017 and 2018, Respondent, through Sulitzer, PC, began applying to the Board for several Additional Office Permits (AOPs). With respect to each of the AOP applications, Respondent stated, under penalty of perjury, that he accepted legal responsibility and liability for dental services rendered in each dental office he maintained. This representation, however, was contradicted by the full release language contained in the Company’s consent forms that patients were requested to sign at the dental offices that Respondent claimed to wholly own and entirely control.

¹ Respondent, through his corporation, has since cancelled FNP number 13995, which had had an expiration date of June 30, 2019.

² Respondent, through his corporation, has since cancelled FNP number 13996, which had had an expiration date of June 30, 2021.

³ FNP number 13997 expired on June 30, 2021.

⁴ FNP number 13998 expired on June 30, 2021.

⁵ FNP number 13999 expired on June 30, 2021.

⁶ FNP number 14180 expired on June 30, 2021.

⁷ Respondent, through his corporation, has since cancelled FNP number 14181, which had an expiration date of June 30, 2021.

⁸ Respondent, through his corporation, has since cancelled FNP number 14182, which had had an expiration date of June 30, 2019.

⁹ FNP number 14209 expired on June 30, 2021.

44. Respondent also represented in the AOP applications that all dental offices he operated were in compliance with Code section 1658.1, and that in each office, there was posted in an area visible to patients a sign setting forth Respondent's name, mailing address, telephone number and dental license number. These representations, as alleged in greater detail in paragraphs 47-49 below, were also false. Based on Respondent's representations, the Board issued the following AOPs to Sulitzer, PC: AOP numbers 79577,¹⁰ 79646,¹¹ 79647,¹² 79648¹³ and 79664.¹⁴ Respondent has since applied to the Board for several other FNP's and AOPs making these same misrepresentations.

FIRST CAUSE FOR DISCIPLINE

(Use of Fraud in the Procurement of Fictitious Name Permits and Additional Office Permits)

45. Respondent, both individually and through his professional corporation, is subject to disciplinary action for unprofessional conduct under Code section 1680, subdivision (w), in that he used fraud in the procurement of permits issued pursuant to the Dental Practice Act, Code sections 1600, et seq.

46. Specifically, and as alleged in greater detail above, when applying for FNPs for various dental offices located throughout California, Respondent represented under penalty of perjury that he wholly owned and entirely controlled the subject offices. These representations were false. The subject dental offices were in fact owned and controlled, either entirely or in part, by the Company.

47. Further, when applying for AOPs for the various dental offices located throughout California, Respondent represented under penalty of perjury that:

¹⁰ AOP number 79577 expired on June 30, 2021.

¹¹ Respondent, through his corporation, has since cancelled AOP number 79646, which had an expiration date of June 30, 2021.

¹² Respondent, through his corporation, has since cancelled AOP number 79647, which had an expiration date of June 30, 2019.

¹³ Respondent, through his corporation, has since cancelled AOP number 79648, which had an expiration date of June 30, 2021.

¹⁴ Respondent, through his corporation, has since cancelled AOP number 79664, which had an expiration date of June 30, 2021.

1 (i) He accepted legal responsibility and liability for dental services rendered in the
2 offices;

3 (ii) The offices were in compliance with section 1658.1 and all other applicable State
4 and Federal laws, including that the offices were in compliance with the supervision requirements
5 of the Dental Practice Act; and,

6 (iii) In the offices there was visibly posted in an area likely to be seen by all patients
7 using the facility a sign with Respondent's name, mailing address, telephone number, and dental
8 license number.

9 48. Respondent's representations set forth in paragraph 47 were false. The true facts
10 were that Respondent did not accept legal responsibility and liability for dental services rendered
11 in the dental offices. Instead, patients presenting at the offices were requested to execute
12 informed consent forms in which it was stated: "I release [the Company] from liability for any
13 claims by me or any third party in connection with my participation or use of the invisible aligner
14 treatment," tending to deceive patients into believing that they have no legal recourse for the
15 aligner treatment that Respondent was supposedly to render.

16 49. Further, the San Francisco Office, Oakland Office, and L.A. Office were not in
17 compliance with section 1658.1 and all other applicable state and federal laws as Respondent had
18 affirmatively represented because:

19 (i) As alleged in greater detail below in paragraph 60, the offices failed to comply
20 with the supervision requirements of the Dental Practice Act in that dental assistants were
21 permitted to take without direct supervision health histories and intraoral 3D scan impressions of
22 patients' dentition for the purpose of orthodontic diagnosis and treatment planning, including for
23 the fabrication and manufacture of orthodontic aligners, in violation of Code section 1750.1,
24 subsections (b)(3) and (b)(8); and/or,

25 (ii) Respondent failed to post in the dental offices any:

26 (a) Signage as required by section 1658.1, subsection (c);

27 (b) Notice of Licensure as required by title 16, CCR section 1065;

1 (c) Copy of title 16, CCR section 1005 (pertaining to minimum standards for
2 infection control) as required by title 16, CCR section 1005, subsection (b)(3); and/or,

3 (d) Dental auxiliary duties as required by title 16, CCR section 1068.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Illegal Use of False, Assumed or Fictitious Name)**

6 50. Respondent, both individually and through his professional corporation, is subject to
7 disciplinary action for unprofessional conduct under Code section 1680, subsection (f), in that he
8 illegally used a false, assumed or fictitious name in the practice of dentistry prior to issuance of
9 any FNP by the Board as follows:

10 (i) On or about December 7, 2017, Respondent was operating the San Francisco
11 Office using a fictitious name prior to issuance of any FNP by the Board for that particular
12 location as required by Code section 1701.5; and,

13 (ii) On or about January 17, 2018, Respondent was operating the Oakland Office
14 using a fictitious name prior to issuance of any FNP by the Board for that particular location as
15 required by Code section 1701.5.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Use of Advertisement Tending to Deceive or Mislead the Public)**

18 51. Respondent, both individually and through his professional corporation, is subject to
19 disciplinary action for unprofessional conduct under Code section 1680, subsection (h), in that he
20 used advertising tending to deceive or mislead the public as follows.

21 52. As alleged in greater detail above, Respondent applied for and obtained FNPs using the
22 Company's name and representing the subject dental offices for which the FNPs were being
23 sought as belonging to his own dental group. Moreover, Respondent used in these offices,
24 whether by way of license or otherwise, the name, trademarks and trade dress belonging to and
25 associated with the Company. Patients were also requested to complete and submit health history
26 and consent forms bearing the Company's name and trademarks and which did not include
27 Respondent's name. Included in those forms was language whereby the patient agreed to waive
28 any liability to the Company for orthodontic aligner treatment. Further, patients presenting at the

1 dental offices were provided with materials and products bearing the Company's name,
2 trademarks and trade dress.

3 53. These circumstances tended to deceive or otherwise mislead the public into concluding
4 that they were presenting at the Company's business instead of Respondent's dental practice.

5 54. Alternatively, since Respondent was holding himself out as being the owner of the
6 offices that the Company in fact owned and controlled, entirely or in part, patients were led to
7 believe that they were at Respondent's dental practice when in fact they were at the Company's
8 place of business.

9 55. Alternatively, patients presenting at the dental offices were led to believe that
10 Respondent and the Company were one and the same when they are not.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Treatment of Patients Not of Record)**

13 56. Respondent, both individually and through his professional corporation, is subject to
14 disciplinary action for unprofessional conduct under Code section 1684.5, in that he
15 performed or allowed to be performed treatment on patients that were not his patient of record as
16 follows.

17 57. As alleged in greater detail above, patients presented at dental offices that Respondent
18 claimed to own and control to obtain orthodontic aligner treatment. At these dental offices,
19 patients were requested to self-verify their own dental health, following which dental assistants
20 utilized 3D scanners to generate digital scans of patients' dentition, intended for diagnosing tooth
21 misalignments, orthodontic treatment planning, and the fabrication of custom-made orthodontic
22 aligners. However, neither Respondent nor any dentist working under him was present to
23 conduct any examination of the patient prior to orthodontic treatment or preliminary examination
24 prior to procedures being performed by dental assistants, as Code section 1684.5, subsections (a)
25 and (b) require.

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FIFTH CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicensed Practice of Dentistry)

58. Respondent, both individually and through his professional corporation, is subject to disciplinary action for unprofessional conduct under Code section 1680, subsection (c), in that he aided and abetted the Company in the unlicensed practice of dentistry, as defined by Code section 1625. The Company performed the unlicensed practice of dentistry as follows:

(i) The Company practiced dentistry by performing, or offering to perform, orthodontic diagnosis and the treatment of malposed teeth, which is the practice of dentistry as defined by Code section 1625, subsection (b);

(ii) The Company indicated that it would perform orthodontic treatment and construct, alter, repair, or sell orthodontic appliances, which is the practice of dentistry as defined by Code section 1625, subsection (c);

(iii) The Company managed or conducted as manager, proprietor, conductor, lessor, or otherwise, places where dental procedures were performed, which is the practice of dentistry as defined by Code section 1625, subsection (e); and/or,

(iv) The Company advertised, fabricated, manufactured and sold orthodontic appliances directly to consumers when the casts and/or impressions for the work had not been made or taken by any licensed dentist (Respondent or otherwise) and without any written authorization for the work by Respondent or any other dentist, which is the practice of dentistry as defined by Code section 1626, subsection (e).

59. Respondent aided and abetted in this unlawful scheme in that he:

(i) Held himself out as the dentist of record for the Company's various dental offices and mobile dental units in California;

(ii) Falsely represented that he wholly owned and entirely controlled the subject dental offices and mobile dental units when he did not;

(iii) Performed or otherwise permitted orthodontic treatment on persons who were not his patient of record; and/or,

(iv) Allowed the construction of orthodontic appliances without any written

1 authorization for the work by Respondent or any dentist working under him.

2 **SIXTH CAUSE FOR DISCIPLINE**

3 **(Aiding and Abetting Dental Assistants to Practice Dentistry in an Unlawful and/or a**
4 **Negligent or Incompetent Manner)**

5 60. Respondent, both individually and through his professional corporation, is subject to
6 disciplinary action for unprofessional conduct under Code section 1680, subsections (d) and/or
7 (y), in that he aided and abetted dental assistants to practice dentistry in a negligent and/or
8 incompetent manner. Specifically, Respondent relied on non-registered dental assistants to
9 perform functions that required the direct supervision of a licensed dentist as follows:

10 (i) Dental assistants took intraoral (digital) impressions for orthodontic appliances
11 without any direct supervision, as Code section 1750.1, subsection (b)(3) requires; and,

12 (ii) Dental assistants performed preliminary measurements for the purpose of
13 orthodontic treatment (i.e., the digital 3D scanning of a patient's dentition) without any direct
14 supervision, as Code section 1750.1, subsection (b)(8) requires.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(Requiring or Permitting the Delivery of Dental Care that Discourages Necessary**
17 **Treatment or Permits Clearly Excessive Treatment, Incompetent Treatment, Grossly**
18 **Negligent Treatment, Repeated Negligent Acts, or Unnecessary Treatment as Determined**
19 **by the Standard of Practice in the Community)**

20 61. Respondent, both individually and through his professional corporation, is subject to
21 disciplinary action for unprofessional conduct under Code section 1685, in that he required,
22 directly or through office policy, or otherwise permitted the delivery of dental care that
23 discouraged necessary treatment or permitted clearly excessive treatment, incompetent treatment,
24 grossly negligent treatment, repeated negligent acts, or unnecessary treatment, as determined by
25 the standard of practice in the community, as follows:

26 (i) Respondent utilized dental assistants who were not directly supervised to obtain
27 health histories and perform intraoral 3D scans for the purpose of orthodontic diagnosis and
28 treatment planning and for the fabrication and manufacture of orthodontic appliances.

Respondent's general practice in this regard constituted gross negligence, repeated negligence and/or incompetence;

(ii) Respondent encouraged, provided, authorized and/or otherwise permitted the treatment of patients who were not his patient of record and without the proper patient-dentist relationship being established and proper orthodontic diagnostic records created. Respondent's general practice in this regard constituted gross negligence, repeated negligence and/or incompetence;

(iii) Respondent encouraged, provided, authorized and/or otherwise permitted orthodontic aligner treatment to patients without first obtaining a proper health history and dental history for the patient. Respondent's general practice in this regard constituted gross negligence, repeated negligence and/or incompetence;

(iv) Respondent encouraged, provided, authorized and/or otherwise permitted orthodontic aligner treatment to patients without first performing a full oral examination of the patient including, *inter alia*, periodontal examination, oral cancer screening, and the taking proper radiographs (e.g., full-mouth x-rays, panorex and/or cephalometric x-rays) so as to rule out health or dental conditions that are contraindicated to orthodontic treatment (e.g., periodontitis, shortened roots, root resorption, etc.). Respondent's general practice in this regard constituted gross negligence, repeated negligence and/or incompetence;

(v) Respondent encouraged, provided, authorized and/or otherwise permitted orthodontic aligner treatment to patients without proper orthodontic records, cephalometric analysis and/or tracing (photographs and digitally scanned models standing alone do not constitute full orthodontic records sufficient to adequately diagnose a patient). Respondent's general practice in this regard constituted gross negligence, repeated negligence and/or incompetence;

(vi) Respondent encouraged, provided, authorized and/or otherwise permitted orthodontic aligner treatment to patients whereby treatment plans entailing only the Company's orthodontic aligners were presented without any alternative treatment options (including, for example, extractions, surgery, other orthodontic approaches such as traditional braces, or no

1 treatment at all). Respondent's general practice in this regard constituted gross negligence,
2 repeated negligence and/or incompetence. Further, Respondent's general practice in this regard
3 tended to discourage necessary treatment or to otherwise encourage unnecessary treatment;

4 (vii) Respondent encouraged, provided, authorized and/or otherwise permitted
5 orthodontic aligner treatment to patients without first obtaining the patients' adequate informed
6 consent. Respondent's general practice in this regard constituted repeated negligence;

7 (viii) Respondent encouraged, provided, authorized and/or otherwise permitted
8 orthodontic aligner treatment to patients without the proper follow up and/or monitoring of the
9 orthodontic movement of teeth. Respondent's general practice in this regard constituted gross
10 negligence, repeated negligence and/or incompetence; and/or,

11 (ix) Respondent encouraged, provided, authorized and/or otherwise permitted
12 orthodontic aligner treatment to patients without final records so as to document case results.
13 Respondent's general practice in this regard constituted gross negligence, repeated negligence
14 and/or incompetence.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Telehealth Statute)**

17 62. Respondent, both individually and through his professional corporation, is subject to
18 disciplinary action for unprofessional conduct under Code section 2290.5, subsection (d), in that
19 he violated the law pertaining to telehealth in the following respects:

20 (i) Respondent delivered orthodontic treatment via the use of telehealth. However,
21 neither Respondent nor any licensed health care provider working under him obtained the
22 patient's consent to the use of telehealth, contrary to the provisions of Code section 2290.5,
23 subsection (b);

24 (ii) In utilizing telehealth to deliver orthodontic treatment to patients, Respondent,
25 contrary to the provisions of Code section 2290.5, subsection (e), altered the scope of practice for
26 orthodontics by limiting the acts that an orthodontist is obligated to perform during orthodontic
27 treatment in that Respondent:

28 (a) Encouraged, provided, authorized and/or otherwise permitted orthodontic

1 treatment on patients without the proper patient-dentist relationship being established, which
2 under Code section 1684.5, subsections (a) and (b) would include a preliminary examination,
3 proper evaluation of medical and dental history, diagnosis of oral conditions and written
4 treatment planning by a licensed dentist;

5 (b) Encouraged, provided, authorized and/or otherwise permitted orthodontic
6 treatment on patients without proper orthodontic diagnostic records and/or treatment plans
7 (including alternatives);

8 (c) Encouraged, provided, authorized and/or otherwise permitted orthodontic
9 treatment on patients without obtaining the patient's adequate informed consent;

10 (d) Failed to provide direct supervision over dental assistants who performed
11 functions that require direct supervision; and/or,

12 (e) Failed to adequately monitor the orthodontic movement of teeth; and/or,

13 (iii) Respondent's treatment approach through telehealth prevented patients from
14 receiving in-person treatment, contrary to the provisions of Code section 2290.5, subsection (c),
15 and even prevented patients from being able to interact with their treating dentist at all, whether
16 remotely or otherwise.

17 **NINTH CAUSE FOR DISCIPLINE**

18 **(Operation of Non-Permitted Mobile Dental Unit)**

19 63. Respondent, both individually and by and through his professional corporation, is
20 subject to disciplinary action for unprofessional conduct under Code section 1680, subsection (n)
21 for violating Code section 1657, subsection (b), in that on or about on or about July 1, 2019, he
22 operated a mobile dental unit at the Arden Fair Mall in Sacramento, California when that mobile
23 dental unit was not registered with the Board in accordance with title 16, CCR section 1049.

24 **FURTHER CHARGES AND ALLEGATIONS CONCERNING PATIENT JV**

25 64. On or about January 28, 2018, patient JV contacted the Company online for purposes
26 of obtaining orthodontic treatment. In so doing, JV expressed a chief complaint as follows: "My
27 front two teeth have been moving for years and causing me to hide from cameras. I'd love to
28 have a straighter smile!" JV also purchased one of the Company's "evaluation kits" (discussed

1 above) for use in determining whether JV was an appropriate candidate for Respondent and the
2 Company's orthodontic aligner treatment.

3 65. The Company's treatment records for JV indicate that on or about January 29, 2018,
4 the Company shipped an evaluation kit to JV pursuant to Respondent's directives.

5 66. On or about February 10, 2018, JV submitted to the Company various "selfie"
6 photographs that JV took of her dentition. On or about February 12, 2020, Company
7 representative AB noted on Respondent's behalf that the photo assessment had been approved.
8 Thereafter, after several attempts, JV created "DIY" impressions that were satisfactory to make
9 aligners.

10 67. On or about April 7, 2018, JV's case was submitted to Dr. GM, a California-licensed
11 dentist affiliated with the Company through a contract with Sulitzer, PC. That same day, Dr. GM
12 noted that he had reviewed and approved a treatment plan for JV. The Company's treatment
13 records for JV contain no entry evidencing that JV was evaluated or examined by any dentist of
14 record within the meaning of Code section 1684.5 or any other dentist prior to the approval of this
15 treatment plan. Likewise, there was no notation of any x-rays having been taken and/or
16 evaluated, and there was no record of any periodontal evaluation or oral cancer screening having
17 been performed.

18 68. Further, the Company's treatment records for JV contain no developed orthodontic
19 diagnosis or any treatment plan established to address JV's concerns. Moreover, there was no
20 medical history or any informed consent obtained, including with respect to the risks, benefits and
21 alternatives for treatment, including no treatment at all.

22 69. Although the Company's treatment records do not include any treatment plan, they do
23 include a simulated model labeled "[JV] meet your New Smile!" This simulated model shows a
24 contraindicated treatment plan since it evidences the planning of a severe anterior open bite, an
25 undesired result that would only worsen JV's orthodontic condition and which Respondent and/or
26 GM's treatment unfortunately achieved.

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1 70. On or about May 7, 2018, the Company shipped aligners to JV pursuant to Dr. GM's
2 directives. However, JV found those aligners to be ill-fitting, and on or about May 24, 2018, the
3 Company approved JV for an "MCC."¹⁵

4 71. On or about May 25, 2018, JV presented to an unknown office affiliated with
5 Respondent and the Company for purposes of obtaining an "MCC" scan. At that time, a
6 technician created a 3D scan of JV's dentition to be used in the modification of JV's treatment
7 plan. The Company's treatment records for JV fail to identify either the location of the office in
8 which these services occurred or the technician who performed the services or even why the
9 services were performed. Nor do the records include the written notification that Code section
10 1684.5, subdivision (c) requires.

11 72. On or about May 26, 2018, the case was resubmitted to Dr. GM, and on or about May
12 27, 2018, Dr. GM approved a modified treatment plan for JV.

13 73. On or about May 30, 2018, the Company approved yet another "MCC" for JV, noting
14 that "Customer needs new impressions for better fit of aligners and additional movement needed
15 on 7, 8, 9, 23, 24, 252 (sic), 26, 27." Although an appointment for additional 3D scanning was
16 scheduled for May 30, 2018, it appears that the appointment was cancelled and no new scan
17 performed at that time.

18 74. Eventually, on or about June 27, 2018, the Company shipped new aligners to JV
19 pursuant to Dr. GM's directives. JV found that these aligners were also ill-fitting, causing JV to
20 raise additional concerns to the Company.

21 75. On or about July 6, 2018, "Emily," who held herself out as being "one of the licensed
22 professionals here at [the Company]," addressed JV's concerns regarding the length of her
23 treatment. In so doing, Emily represented that Dr. GM had approved JV for an additional three-

24
25 ¹⁵ It is unknown what "MCC" stands for. Based on subsequent events and Respondent's
26 records, the Board assumes that "MCC" stands for "mid-course correction," or words to that
27 effect. Indeed, it should be noted that Respondent's method of charting is difficult if not virtually
28 impossible to follow due to the use of internal abbreviations with unknown meaning, the charting
of only partial conversations between Company representatives and the patients, and the use of
vague notes such as "scan completed," but without any indication as to where the scan was
performed, by whom, or even why the scan was performed.

1 month treatment plan since he had determined that it would take only three months to correct
2 JV's main concerns.

3 76. JV, however, remained concerned because the aligners she received did not cover her
4 entire dentition, leaving molars exposed. On or about July 13, 2018, Emily represented to JV that
5 these circumstances were acceptable, but that if JV desired aligners that fit over all teeth,
6 additional 3D scanning would be required.

7 77. As of October 2018, JV was still dissatisfied with her treatment. On or about October
8 16, 2018, JV presented to an unknown office affiliated with Respondent and the Company for
9 purposes of obtaining additional 3D scanning. At that time, a technician took additional
10 photographs and created a new 3D scan of JV's dentition to be used in the modification of JV's
11 treatment plan. The Company's treatment records for JV once again fail to identify either the
12 location of the office in which these services occurred or the technician who performed these
13 services or even why the services were performed. Likewise, the records again fail to include the
14 written notification that Code section 1684.5, subdivision (c) requires.

15 78. On or about October 17, 2018, JV's case was resubmitted to Dr. GM, who approved a
16 modified treatment plan for JV that same day. On or about November 2, 2018, Dr. GM directed
17 that new aligners be shipped to JV pursuant to the modified treatment plan.

18 79. Meanwhile, JV had raised additional concerns regarding her treatment in that black
19 triangles were forming between her teeth. On or about October 24, 2018, a Company
20 representative informed JV that remote aligner therapy could not be used to address those issues
21 and that JV would have to contact a local dentist for corrective treatment following the
22 completion of Respondent and/or GM's treatment.

23 80. On or about November 6, 2018, JV presented to general treating dentist, Dr. JM, for
24 routine care and treatment. At that time, Dr. JM noted that JV's tooth number 18 was cracked
25 and required restorative crown therapy. Dr. JM also informed JV that the orthodontic treatment
26 that JV was then receiving from Respondent might have contributed to the cracked tooth due to
27 the force that was being applied to JV's posterior teeth. On or about December 3, 2018, Dr. JM
28 prepared JV's tooth number 18 for crown therapy; he placed the crown on or about February 8,

1 2019. At that time, Respondent and/or GM's orthodontic treatment with JV remained ongoing.

2 81. JV informed the Company regarding the circumstances of her cracked tooth and new
3 crown in early February 2019. On or about February 11, 2019, JV once again presented to an
4 office affiliated with Respondent and the Company. At that time, a technician created a new 3D
5 scan of JV's dentition to be used in the modification of JV's treatment plan and for the fabrication
6 of new aligners to accommodate JV's recently-placed crown. The Company's treatment records
7 for JV once again fail to identify either the location of the office in which these services occurred
8 or the technician who performed these services or even why the services were performed. Again,
9 the records failed to include the written notification that Code section 1684.5, subdivision (c)
10 requires.

11 82. On or about February 22, 2019, JV's case was re-submitted to Dr. GM. On or about
12 February 24, 2019, Dr. GM approved a modified treatment plan for JV, and on or about March
13 15, 2019, new aligners were shipped to JV per Dr. GM's directives.

14 83. As of April 2019, JV remained dissatisfied with Respondent and/or GM's treatment
15 and was concerned by a severe 2 mm – 4 mm anterior open bite that had by that time developed
16 cuspid-to-cuspid, and the related pressure that was being applied to her posterior teeth.

17 84. On or about April 23, 2019, JV consulted an orthodontist, Dr. ML, regarding her
18 concerns. At that time, Dr. ML took x-rays and photographs, created 3D scanned imagery of
19 JV's dentition, and performed an examination and evaluation. Dr. ML determined that JV would
20 require 10-18 months of corrective treatment entailing upper and lower Clear Correct aligners, at
21 a discounted cost of approximately \$2,250.00.

22 85. In or around early May 2019, JV contacted the Company via text message in an
23 attempt to speak with Dr. GM regarding the various concerns that JV had with Dr. GM and/or
24 Respondent's ongoing treatment. In replying to JV's text messaging, Company representative
25 Jessica encouraged JV to speak with a member of the Company's dental team, but informed JV
26 that she would not be able to speak with Dr. GM directly.

27 86. Thereafter, on or about May 2, 2019, Company representative Emily informed JV for
28 the first time that Respondent, Dr. GM and the Company's remote treatment approach was too

1 limited to address JV's orthodontic issues, which would require alternative treatment approaches
2 to correct.

3 87. During the period of on or about May 3, 2019 to on or about June 10, 2019, JV and
4 Company representatives engaged in further communications. During those communications, JV
5 specifically requested to speak with Dr. GM. Company representatives continued in their refusal
6 to connect JV with Dr. GM and refused to disclose even Dr. GM's dental license number. At no
7 time did Company representatives ever advise JV regarding Respondent's involvement in her
8 care and treatment or relationship to Dr. GM, who treated patient JV through his contract with
9 Respondent.

10 88. During these communications, the Company also agreed to provide JV \$1,387.50,
11 representing a 75% refund of the monies JV had paid for Respondent and/or GM's treatment, but
12 only on condition that JV return her unused aligners to the Company and sign a general release
13 form releasing the Company and its affiliated dentists, including Respondent and GM, from any
14 and all liability, whether known or unknown. The release form also required JV to keep any and
15 all details concerning the release form and her transactions with the Company and its affiliated
16 dentists, including Respondent and GM, strictly confidential. This included a covenant whereby
17 JV would not communicate any disparaging or negative statements or opinions about the
18 Company and its affiliated dentists, including Respondent and GM, in any manner whatsoever,
19 whether to the press, on social media, to a licensing or regulatory agency, or otherwise. In this
20 regard, the release form that the Company presented to JV on behalf of Respondent, GM and
21 itself, included the following illegal provision:

22 Releasor covenants and agrees that he/she shall keep strictly confidential
23 and shall not make public, disseminate, release or otherwise reference,
24 allude to, suggest to any person, agency or other entity, including but not
25 limited to media or press, in any manner whatsoever, the terms or existence
26 of this General Release or the facts underlying the Transaction. Releasor
27 shall not post on social media any information or reviews regarding the
28 Transaction or the terms or existence of this General Release, and shall
take all steps necessary to delete or eliminate any such postings made prior
to the date of this General Release. Without limiting any of the foregoing,
Releasor further covenants and agrees that he/she will not make, publish, or
communicate any statements or opinions that would disparage, create a

1 negative impression of, or in any way be harmful to the business or
2 business reputation of SDC or its affiliates or their respective employees,
3 officers, directors, products, or services. Releasor covenants and agrees that
4 he/she has not filed any complaint with any local, state or federal agency or
5 regulator (each, a "Complaint" and collectively, the "Complaints"), or, in
6 the event that Releasor has filed any Complaint(s) prior to executing this
7 Release, Releasor hereby agrees to withdraw any and all outstanding
8 Complaints upon receipt of the Payment. Releasor further agrees that
9 he/she will not file any future Complaints.

10 Further, the release form provided that any breach of the confidentiality provisions would entitle
11 the Company to, *inter alia*, liquidated damages in the amount of \$10,000 per violation, with
12 jurisdiction and venue for any such claim residing in Davidson County, Tennessee, and governed
13 by the laws of the State of Tennessee. JV declined this offer, including because she had already
14 filed a complaint with the Board concerning Respondent and/or GM's treatment. In her
15 complaint to the Board, JV expressed a desire to "notify and hold [Dr. GM] responsible for his
16 treatment via [the Company] so as to not harm any more people."

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Gross Negligence)**

19 89. Complainant incorporates herein by reference paragraphs 64-88 above as if set forth
20 in full.

21 90. Respondent is subject to disciplinary action for unprofessional conduct under Code
22 sections 1670 and/or 1685 in that he committed acts of gross negligence during his care and
23 treatment of patient JV as follows:

24 91. As alleged in greater detail above, Respondent provided or otherwise permitted the
25 delivery of orthodontic treatment to JV without having first obtained and/or created adequate pre-
26 treatment orthodontic diagnostic records, including proper medical history, the taking of a full
27 oral examination of the patient (including periodontal evaluation and oral cancer screening), and
28 the taking and study of proper radiographs. Respondent also failed to make and record a
complete and accurate diagnosis for JV. Further, Respondent failed to note and record any
treatment plans that addressed the total diagnoses for JV, and JV's chief complaint and treatment
goals.

ELEVENTH CAUSE FOR DISCIPLINE

(Repeated Acts of Negligence)

92. Complainant incorporates herein by reference paragraphs 64-88 above as if set forth in full.

93. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 1670 and/or 1685 in that he committed repeated acts of negligence during his care and treatment of patient JV or otherwise permitted others (i.e., Dr. GM) to do so. In addition to committing those repeated acts of gross negligence set forth in paragraphs 89-90 above, each of which are incorporated herein by reference, Respondent committed or otherwise permitted the following negligent acts:

(i) Respondent failed to ensure that the dental technicians who performed services (e.g., the taking of dental scans) for him and/or Dr. GM during the care and treatment of JV performed those services with proper supervision, authorization and/or written notification; and/or,

(ii) Respondent failed to ensure that dental technicians performing services for him and/or Dr. GM during the care and treatment of patient JV properly identified themselves in the Company's dental records for JV, in violation of Code section 1683, subdivision (a).

TWELFTH CAUSE FOR DISCIPLINE

(Treatment of Patient Not of Record)

94. Complainant incorporates herein by reference paragraphs 64-88 above as if set forth in full.

95. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 1684.5, subdivision (a) and/or 1685 in that he performed or otherwise permitted treatment on patient JV when JV was not a patient of record of either Respondent or Dr. GM, as defined by Code section 1684.5, subdivision (b).

THIRTEENTH CAUSE FOR DISCIPLINE

(Violations of the Telehealth Statute)

96. Complainant incorporates herein by reference paragraphs 64-88 above as if set forth in full.

97. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 1685 and/or 2290.5, subsection (d), in that he violated the law pertaining to telehealth or otherwise permitted another licensed person (Dr. GM) to do so as follows:

98. In utilizing telehealth to deliver orthodontic treatment to patient JV, Respondent, contrary to the provisions of Code section 2290.5, subdivisions (c), (e) and/or (g), altered the scope and standards of practice for orthodontics by limiting the acts that an orthodontist is obligated to perform during orthodontic treatment in that Respondent:

(i) Treated or otherwise permitted the treatment of patient JV without the proper patient-dentist relationship having been established, as alleged hereinabove;

(ii) Treated or otherwise permitted the treatment of patient JV without proper orthodontic diagnostic records (including radiographs) and/or comprehensive treatment plans (including alternative treatment plans), as alleged hereinabove;

(iii) Treated or otherwise permitted the treatment of patient JV without having obtained JV's adequate informed consent to treatment; and/or,

(iv) Failed to follow the requirements of adequate, reasonable and requested patient communication when he failed to make himself available to patient JV so that the patient could discuss treatment concerns with either him and/or Dr. GM. Patient JV also requested her dental records, which request was denied.

FOURTEENTH CAUSE FOR DISCIPLINE

(Aiding and Abetting Violations)

99. Complainant incorporates herein by reference paragraphs 64-88 above as if set forth in full.

100. Respondent is subject to disciplinary action for unprofessional conduct under Code section 1680, subdivisions (d) and/or (y), in that he aided and abetted a licensed person (Dr. GM) to practice dentistry unlawfully and/or in a negligent or incompetent manner as alleged above in paragraphs 64-98.

FIFTEENTH CAUSE FOR DISCIPLINE

(Use of Illegal Release Agreement)

101. Complainant incorporates herein by reference paragraphs 64-88 above as if set forth in full.

102. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 143.5, subdivision (a) and 1670, in that he included, or permitted to be included, a provision in an agreement to settle a civil dispute that sought to prohibit the other party (*i.e.*, patient JV) from contacting, filing a complaint with, or cooperating with the Board, as set forth in greater detail in paragraph 88 above.

SIXTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

103. Respondent is subject to disciplinary action under Code section 1670 in that he committed acts of unprofessional conduct, as set forth above in paragraphs 63-102.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Dental Board of California issue a decision:

1. Revoking or suspending Dental License number 51841, issued to Jeffrey Alan Sulitzer, DMD;
2. Ordering Jeffrey Alan Sulitzer, DMD to pay the Dental Board of California the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/1/21

Karen M. Fischer
KAREN M. FISCHER
Executive Officer
Dental Board of California
Department of Consumer Affairs
State of California
Complainant

SA2019102700
Second Amended Accusation.2.docx